

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PLAINTIFF

DANNY TABB

- V -

DEFENDANTS

NAPHCARE, HSA,

PIERCE COUNTY JAIL, c/o Olson, nurse

Wendy, Dr. Balderama,

Lt. Pero, Sgt. Watkins, Capt. Genga, E+AL

FILED	LODGED
RECEIVED	
JUL 28 2021	
CLERK U.S. DISTRICT COURT	
WESTERN DISTRICT OF WASHINGTON AT TACOMA	
BY	DEPUTY

CASE NO:

HOW: 3:21-cv-05541-BHS-TLF

SUED IN THEIR

INDIVIDUAL CAPACITIES

Dr. Balderama, nurse Wendy, Captain Genga, Sgt. Watkins

Lt. Pero, c/o Olson

SUED IN THEIR INDIVIDUAL

AND OFFICIAL CAPACITIES c/o Olson

Dr. Balderama, Nurse Wendy, Capt. Genga, Lt. Pero, Sgt. Watkins

- INTRODUCTION -

THIS IS A CIVIL RIGHTS ACTION FILED BY
DANNY FOSTER TABB, A INMATE, FOR COMPENSATORY
DAMAGES AND PUNITIVE DAMAGE RELIEF UNDER
42 USC 1983 ALLEGING DENIAL OF MEDICAL
CARE IN VIOLATION OF THE EIGHTH AMENDMENT
TO THE UNITED STATES CONSTITUTION

- JURISDICTION -

THE COURT HAS JURISDICTION OVER THE
PLAINTIFFS CLAIM OF VIOLATION OF FEDERAL
CONSTITUTIONAL RIGHTS UNDER 42 USC 1983,
1332, AND 1343 AND THE ADA AMENDMENT ACT
OF 2008. DUFFY V. RIVELAND, 98 F.3d 447 ADA OF 1990
RA OF 1973.

NAME: DANNY FOSTER TABB INMATE NO: 2021 102 009

PLACE OF CONFINEMENT

PIERCE COUNTY SHERIFFS DEPARTMENT

STREET	CITY	STATE	ZIP CODE
910 TACOMA AVE SOUTH	TACOMA	WA	98402

ARE THERE ADDITIONAL PLAINTIFFS YES ☐ NO ☒

DEFENDANTS INFORMATION

NAME: Dr. Balderama POSITION Medical Doctor

Wendy - Head nurse, Pero - Lt, Genga - Capt., Watkins - Sgt

STREET	CITY	STATE	ZIP CODE
910 TACOMA AVE. SOUTH	TACOMA	WA	98402

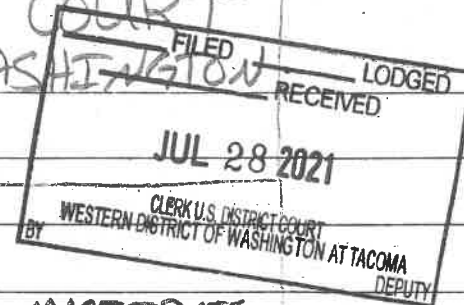
ARE YOU SUING THIS DEFENDANT

PERSONAL CAPACITY ☐ OFFICIAL CAPACITY ☐

BOTH CAPACITIES ☒

ARE YOU SUING MORE THAN ONE? YES ☒ NO ☐

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON



DANNY TABB

NO:

V.

PIERCE COUNTY JAIL

UNITED STATES MAGISTRATE
JUDGE

NAPHCARE, ET AL.

DISPOSITIVE MOTION

DATED:

THESE ARE SUPPORTING FACTS. THAT
PIERCE COUNTY JAIL AND NAPHCARE ARE IN
DIRECT VIOLATION UNDER 42 U.S.C. 1983
ACT OF THE FEDERAL CONSTITUTION. ALSO
OF THE A.D.A. ACT OF 1990.

I am an inmate at Pierce County jail.
MEDICAL staff have violated my 8th and
14th Amendment rights by failing to comply
with jail policy, Federal laws, state and
local laws. I am a disabled person who
is qualified as hearing impaired/deaf
under Title 2 of the Americans with
disabilities Act. 28 CFR 35.160. DUFFY V.
Riveland 88 F.3d 7525 and 98 F.3d 447.
42 USCS 12131 to 42 USCS 121324. THE
RA OF 1973, and ADA 1990 and 2008.

The Pierce county jail is a public
entity and must provide reasonable accommodations
to persons with disabilities.

- PARTIES -

I, DANNY TABB WAS INCARCERATED AT PIERCE COUNTY JAIL FACILITY DURING THE EVENTS DESCRIBED IN THIS COMPLAINT.

(DEFENDANT: HSA) IS A MEDICAL ADMINISTRATOR RESPONSIBLE FOR ENSURING PROVISIONS OF MEDICAL CARE TO INMATES. HE OR SHE IS SUED IN INDIVIDUAL AND OFFICIAL CAPACITY.

(DEFENDANT: LT. PERO) IS A Lt. Responsible for reviewing all grievances by inmates. She is sued in her individual and official capacities.

(DEFENDANT: GENGA) IS a captain Responsible for reviewing all inmate appeals filed by inmates. He is sued in his individual and official capacities.

(DEFENDANT: WATKINS) IS a Sgt. Responsible for addressing grievances.

(DEFENDANT: M. Balderama) IS a Medical Doctor at the jail.

(DEFENDANT: OLSON) IS a correctional officer Responsible for safety of inmates, informing inmates of medication pass.

(DEFENDANT: Wendy) IS a head nurse at the jail.

(DEFENDANT: Naphcare) IS the Medical company contracted by the Jail.

ALL DEFENDANTS HAVE ACTED AND CONTINUE TO ACT UNDER COLOR OF STATE LAW AT ALL TIMES RELEVANT TO THIS COMPLAINT.

- STATEMENT OF FACTS -

I am a qualified handicapped person. I am qualified as hearing impaired under Title 2 of the Americans with disabilities Act (42 USCS §§ 12131-12134) (42 USC 1983) (42 USC § 12102(2), The Rehabilitation Act of 1973 Doc No 39-3. (Duffy v. Riveland, 98 F.3d 447 (Court 9th circuit court of Appeals) ADA of 1990). 28 C.F.R. § 35.160 (b)(1) and (2).

I am a hearing impaired inmate being held in custody at the Pierce county Jail. I require American Sign Language interpreters for all legal court proceedings. I require the use of hearing aids to assist in communicating with jail staff when not in court or no ASL interpreter is available. Normally I have hearing aids when in custody but the arresting police officer broke mine when he used excessive force during the arrest.

While in custody of the Jail I have requested that the jail/state/county replace my hearing aids through the medical staff. I was told by the

Dr. that they will not approve my request. I then filed a grievance which has never been responded to. Jail policy states all Grievances will be answered to within 10 working days. As of writing this, it has now been 20 working days with no response. I sent a kite to medical asking what is taking so long and have not received any response in over 7 working days. Diliberat indefrnce to my medical needs.

Title 2 of the ADA provides that no qualified individual with a disability, shall, by reason of such disability, be excluded from participation in or denied the benefits of the services, programs or activities of a public entity or be subject to discrimination by any such entity. 42 USC 12132
Duffy v. Riveland, 98 F.3d 447
Duffy v. Riveland, 98 F.3d 7525

Prison and Jail officials must ensure that inmates receive adequate food, clothing, shelter, and medical care and must take reasonable measures to guarantee the safety of the inmates.

A "sufficiently serious" constitutional deprivation is one which results in the denial of "the minimal civilized measure of life necessities. Rhodes v Chapman 452 U.S. 337, 347, 101 S.Ct. 2392. 69 L.Ed. 2d 59(1981)

WAC S. 182-503-0120

RCW 41.05.021

Reasonable accommodations for deaf and hard of hearing. Provide auxiliary aids and services.

Jail staff have committed 8th Amendment and 14th Amendment violations.

- FACTS -

I am a handicapped person who is hearing impaired, I qualify as Deaf. That this jail receives federal financial assistance. I have been impermissibly discriminated against on the basis of my physical handicap. My handicap substantially limits a major life activity.

Protection of disabled Persons, ADA 28 C.F.R. § 35.160 (b) (2), Requires public entities to give primary consideration to the requests of the individual with disabilities in determining what type of auxiliary aids and services is necessary.

28 CFR 35.160 (b) (1) A public entity shall furnish appropriate auxiliary aids and services where reason to afford individuals with disabilities, including applicants participating, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.

28 CFR 35.160 (b) (2)

(2) The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. In determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely

manner, and in such a way as to protect the privacy and independence of the individual with a disability

The public entity must provide an opportunity for individuals with disabilities to request the auxiliary aids and services of their choice and must honor the choice.

A city is obligated to ensure that communications with disabled persons are as effective as communication with other, non-disabled persons.

The ADA defines a disability as:

- (A) A physical or mental impairment that substantially limits one or more of the major life activities of such individual
- (B) A record of such impairment; or
- (C) Being regarded as having such an impairment

Title 2 of the ADA and 8th Amendment.
42, USCS §§ 12131 and 12132 state that a jail is a public entity

Rehabilitation Act of 1973 Doc. No. 39-3

Provide auxiliary aids meets the essential eligibility requirements. Powell v. 2014 US Dist. Lexis 85990
42 USC § 1983. Public entity means any state or local Government.
Page 6 of 8

- EXHAUSTION -

I HAVE EXHAUSTED ALL ADMINISTRATIVE REMEDIES

- CLAIM FOR RELIEF -

THE FAILURE OF DEFENDANT(S) (H. Pero, Sgt. ~~Wald~~) TO ADDRESS AND CALL ATTENTION OF MY GRIEVANCE TO THOSE RESPONSIBLE. DENIED ME OF MY DUE PROCESS OF LAW IN VIOLATION OF THE 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION

THE FAILURE OF DEFENDANT (HSA) TO SUPPLY ME WITH MEDICAL AIDS, HEARING AIDS.

THE FAILURE OF MEDICAL STAFF TO ADDRESS MY MEDICAL CONDITION AND DISABILITY IN A TIMELY MANNER. DENIED ME OF MY 8TH AMENDMENT RIGHTS AND EXCLUDED ME FROM PROGRAMS AND SERVICES.

THE FAILURE OF CORRECTIONAL OFFICERS TO NOTIFY ME AND MAKE SURE I WAS MADE AWARE OF MEDICATION PASS ENDANGERED MY LIFE DUE TO MISSING MEDICATIONS I TAKE FOR EPILEPSY.

THE FAILURE OF C/O OLSON TO MAINTAIN MY PRIVACY OF MY MEDICAL CONDITION BY DISCUSSING MY DISABILITY WITH OTHER INMATES VIOLATED HEPA LAWS.

- RELIEF -

AWARD COMPENSATORY DAMAGES JOINTLY
SEVERALLY AGAINST¹⁾(NAPHCARE) FOR THE EMOTIONAL
INJURIES SUSTAINED AS A RESULT.

AMOUNT: TO BE DETERMINED

AWARD PUNITIVE DAMAGES IN THE

AMOUNT: TO BE DETERMINED

GRANT SUMMARY JUDGEMENT FOR PLAINTIFF

GRANT SUCH OTHER RELIEF AS IT MAY APPEAR

THAT I AM ENTITLED.

HAVE PIERCE COUNTY/JAIL PAY FOR AND
SUPPLY ME WITH HEARING AIDS

HAVE NAPHCARE SUPPLY ME WITH HEARING AIDS
AND HEALTH STATUS REPORT

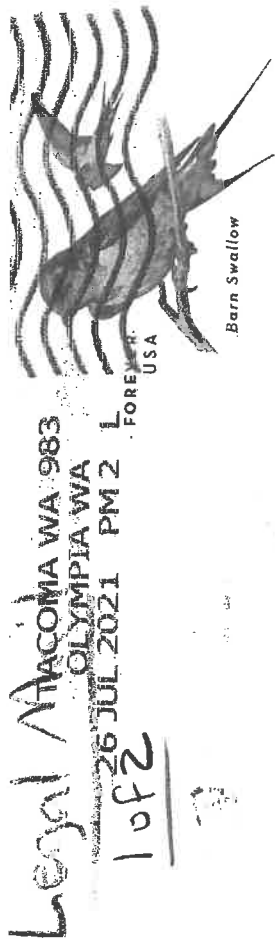
I DECLARE UNDER PENALTY OF
PERJURY THAT THE FOREGOING IS TRUE
AND CORRECT

EXECUTED ON 07-25-2021

SIGNATURE OF PLAINTIFF

Danny F. Kahr

Inmate Name: Danny Tabb
Booking Number: 2021702009
Pierce County Sheriff's Department
910 Tacoma Ave S
TACOMA WA 98402-2104



Clerk
United States District Court
Western District of Washington
United States District Courthouse
1717 Pacific Ave. Room 3100
Tacoma WA, 98402-3200

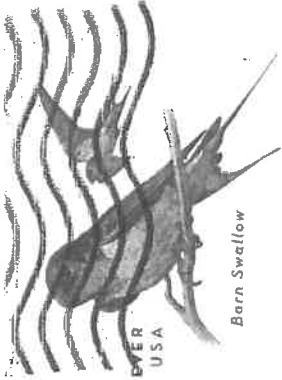
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98402-320099



Inmate Name Danny Tabb
Booking Number 2021102009
Pierce County Sheriff's Department
910 Tacoma Ave S
TACOMA WA 98402-2104

Legal Tacoma WA 983
OLYMPIA WA
2021 JUL 21 PM 2 L
FOREVER
USA



Clerk
United States District Court
Western District of Washington
United States District Courthouse
1717 Pacific Ave Room 3100
Tacoma WA, 98402-3200

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